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IN THE COURT OF APPEALS OF INDIANA

KENNETH BECKENHAUPT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0803-CR-223
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jeffrey Marchal, Commissioner
The Honorable Mark D. Stoner, Judge
Cause No. 49G06-0703-FC-26200

October 10, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Kenneth Beckenhaupt appeals his conviction and four-year sentence for one count of Class C felony child molestation. We affirm.

Issues

The issues before us are:

I. whether there is sufficient evidence to support Beckenhaupt's conviction; and

II. whether his sentence is inappropriate.

Facts

On February 2, 2007, thirteen-year-old K.F. walked past the home of sixty-four year-old Beckenhaupt after getting off her school bus. Beckenhaupt invited K.F. to come inside and talk and she agreed to do so; she knew Beckenhaupt from previous conversations with him. Beckenhaupt was showing K.F. various family pictures, then invited her into his bedroom to look at a picture of wolves his sister had taken. When K.F. went into the bedroom, she saw a poster on his closet that said, "Kenny loves [K.F.]." Tr. p. 17.

After seeing the poster, K.F. was "freaked out" and told Beckenhaupt that she had to go home. Id. Beckenhaupt then recited a poem he had written about K.F. and told her "age is just a number." Id. at 18. K.F. again indicated she was leaving, and Beckenhaupt hugged her tightly. He also kissed her on the cheek, neck, and mouth. K.F. described the mouth kiss as a "French kiss . . . [u]sing tongue." Id. at 20. K.F. managed to pull away

while Beckenhaupt kept repeating that he loved her. K.F. left the house and reported what had happened to the police.

The State charged Beckenhaupt with Class C felony child molesting, Class C felony attempted child molesting, and Class D felony dissemination of matter harmful to minors. After a bench trial, the trial court involuntarily dismissed the latter two counts but found Beckenhaupt guilty of Class C felony child molesting. On February 28, 2008, the trial court imposed a total sentence of four years, with three years suspended and one executed. Beckenhaupt now appeals.

Analysis

I. Sufficiency of Evidence

Beckenhaupt first contends that there is insufficient evidence to support his conviction. When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. Henley v. State, 881 N.E.2d 639, 652 (Ind. 2008). "We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence." Id. We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. Id.

To convict Beckenhaupt of Class C felony child molesting, the State was required to prove that he fondled or touched K.F., a child under fourteen years of age, with the intent to arouse or satisfy his or K.F.'s sexual desires. See Ind. Code § 35-42-4-3(b). Beckenhaupt admits touching K.F., but he contends there was no touching with intent to arouse anyone's sexual desires. "The intent to arouse or satisfy the sexual desires of the

child or the older person may be established by circumstantial evidence and may be inferred 'from the actor's conduct and the natural and usual sequence to which such conduct usually points.'" Kanady v. State, 810 N.E.2d 1068, 1069-70 (Ind. Ct. App. 2004) (quoting Nuerge v. State, 677 N.E.2d 1043, 1048 (Ind. Ct. App. 1997), trans. denied). Mere touching is insufficient to constitute child molestation. Id. at 1070.

Beckenhaupt describes his touching of K.F. as a merely innocent hug and kiss goodbye. However, he appears to be asking this court to reweigh evidence and judge witness credibility by arguing that no witness corroborated K.F.'s testimony that Beckenhaupt "French" kissed her by inserting his tongue into her mouth. No corroboration was necessary. It is well-settled that a conviction for child molesting may rest upon the uncorroborated testimony of the alleged victim. Baber v. State, 870 N.E.2d 486, 490 (Ind. Ct. App. 2007), trans. denied. We readily conclude that "French" kissing a child goes far, far beyond an innocent peck on the cheek and is definitive evidence of intent to arouse the sexual desires of either the adult or the child. There is sufficient evidence to support Beckenhaupt's conviction.

II. Sentence

Beckenhaupt also contends that his four-year sentence is inappropriate. Indiana Appellate Rule 7(B) provides that we may revise a sentence if we find that it is inappropriate in light of the nature of the offense and the character of the offender. Although Rule 7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the

unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id.

We also believe it is relevant to consider that of Beckenhaupt's four-year sentence, three years are suspended to probation. This means that, assuming Beckenhaupt received one-for-one good-time credit while incarcerated, he already has served the one-year executed portion of his sentence and is now on probation. There is a considerable qualitative difference between time spent in a jail or prison and time spent on probation. Beckenhaupt faces the potential of serving those three years if he violates probation, but the fact remains that he is enjoying a much greater degree of freedom than an incarcerated person. A sentence of one year executed plus three years suspended is not as harsh as a sentence of four years executed would be.

Regarding the nature of the offense, we find it to be neither especially egregious nor especially minor. The evidence indicates that Beckenhaupt developed an unhealthy obsession with a child over fifty years younger than him, as revealed by the "Kenny loves [K.F.]" poster and the poem he recited. Tr. p. 17. Although the extent and duration of sexual contact between Beckenhaupt was not great, we believe that "French" kissing a minor is as disturbing as the fondling of a child's body.

Regarding Beckenhaupt's character, he admitted to having an extensive history of alcohol-related misdemeanor convictions from Ohio, eight altogether,[1] plus misdemeanor

[1] These convictions are not reflected in the presentence report, but Beckenhaupt admitted to them during the sentencing hearing.

convictions in Indiana for public intoxication and operating a vehicle while intoxicated. The most recent conviction occurred in 2002. Although none of these convictions were sexual in nature, the sheer number of them reflects some difficulty by Beckenhaupt in conforming to the requirements of the law.

In sum, Beckenhaupt's character is neither overwhelmingly negative nor positive; the same is true of the nature of the offense. Given this, the advisory sentence of four years is entirely appropriate, especially in light of the fact that three of those four years are suspended.

Conclusion

There is sufficient evidence to support Beckenhaupt's conviction, and his sentence is appropriate. We affirm.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.